

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

DONALD BICKFORD
TDCJ-CID #1103721

VS.

DOUG DRETKE, ET AL.

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C.A. NO. C-04-669

ORDER DENYING PETITIONER'S MOTION FOR REHEARING

Pending is petitioner's "Objections and Motion for Rehearing on Evidentiary Hearing" (D.E. 28), in which petitioner complains of "any further involvement of a magistrate judge in this case" and requests reconsideration of the order denying his request for an evidentiary hearing (D.E. 28). For the reasons stated herein, petitioner's motion is denied.

I. Background

On December 8, 2004, petitioner filed a § 2254 petition for habeas corpus relief challenging the revocation of his deferred adjudication. (D.E. 1). Respondent moved for summary judgment to dismiss the petition on the grounds that two of petitioner's claims were time-barred and that his claims were without merit. (D.E. 16). Petitioner filed a response in opposition. (D.E. 19). By Memorandum and Recommendation entered September 21, 2005, it was recommended that respondent's motion for summary judgment be granted. (D.E. 21). On October 12, 2005, petitioner filed objections to the recommendation (D.E. 24), and requested an evidentiary hearing. (D.E. 23). On October 20, 2005, magistrate judge Brian L. Owsley denied petitioner's request for an evidentiary hearing. (D.E. 25). By order and final judgment entered November 2, 2005, the Court adopted the recommendation, granted respondent's summary judgment motion, and dismissed petitioner's habeas claims. (D.E. 26, 27).

II. Discussion

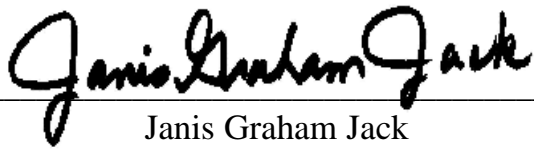
In his objection and motion for rehearing on evidentiary hearing (D.E. 28), petitioner argues that the magistrate judge should no longer be involved in this case because an evidentiary hearing "is

absolutely necessary to develop the record...”. That is, petitioner’s sole basis for objecting to the magistrate judge’s involvement in this case is a prior adverse ruling. Prior adverse rulings alone do not create grounds for disqualification. Plaquemines Parish School Bd. v. United States, 415 F.2d 817 (5th Cir. 1969). Thus, to the extent plaintiff’s motion is a request to disqualify the magistrate judge from hearing matters in this case, the motion is denied.

Similarly, plaintiff’s request to reconsider the denial of his request for an evidentiary hearing is denied. In this case, petitioner’s state court record was filed, respondent moved for summary judgment, and the petitioner filed arguments in opposition. The Court was able to decide the merits of plaintiff’s case based on these materials, and an evidentiary hearing was neither necessary nor appropriate. See Rule 8, Rules Governing Section 2254 Cases.

Accordingly, petition’s motion for rehearing (D.E. 28) is DENIED.

ORDERED this 2nd day of February, 2006.



Janis Graham Jack
United States District Judge